

(2) A statement as to the reasons the State and the local government cannot perform or contract for performance of the requested work.

(3) A written agreement from an eligible applicant that such applicant will be responsible for the items in subparagraph (b)(1) (i) and (ii) of this section, in the event that a State is legally unable to provide the written agreement.

(c) *Implementation.* (1) If the Regional Administrator approves the request, a mission assignment will be issued to the appropriate Federal agency. The mission assignment letter to the agency will define the scope of eligible work, the estimated cost of the eligible work and the billing period frequency. The Federal agency must not exceed the approved funding limit without the authorization of the Regional Administrator.

(2) If all or any part of the requested work falls within the statutory authority of another Federal agency, the Regional Administrator shall not approve that portion of the work. In such case, the unapproved portion of the request will be referred to the appropriate agency for action.

(3) If an impact-State requests assistance in providing evacuation and sheltering support outside an impact-State, FEMA may directly reimburse a host-State for such eligible costs through a grant to a host-State under an impact-State's declaration, consistent with § 206.202(f)(1). FEMA may award a grant to a host-State when FEMA determines that a host-State has sufficient capability to meet some or all of the sheltering and/or evacuation needs of an impact-State, and a host-State agrees in writing to provide such support to an impact-State.

(d) *Time limitation.* The time limitation for completion of work by a Federal agency under a mission assignment is 60 days after the President's declaration. Based on extenuating circumstances or unusual project requirements, the Regional Administrator may extend this time limitation.

(e) *Project management.* (1) The performing Federal agency shall ensure that the work is completed in accordance with the Regional Administrator's approved scope of work, costs and time limitations. The performing Fed-

eral agency shall also keep the Regional Administrator and Grantee advised of work progress and other project developments. It is the responsibility of the performing Federal agency to ensure compliance with applicable Federal, State and local legal requirements. A final inspection report will be completed upon termination of all direct Federal assistance work. Final inspection reports shall be signed by a representative of the performing Federal agency and the State. Once the final eligible cost is determined (including Federal agency overhead), the State will be billed for the nonFederal share of the mission assignment in accordance with the cost sharing provisions of the FEMA-State Agreement.

(2) Pursuant to the agreements provided in the request for assistance the Grantee shall assist the performing Federal agency in all State and local jurisdictional matters. These matters include securing local building permits and rights of entry, control of traffic and pedestrians, and compliance with local building ordinances.

[55 FR 2304, Jan. 23, 1990, as amended at 64 FR 55161, Oct. 12, 1999; 74 FR 60214, Nov. 20, 2009]

**§ 206.209 Arbitration for Public Assistance determinations related to Hurricanes Katrina and Rita (Major disaster declarations DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607).**

(a) *Scope.* Pursuant to section 601 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, this section establishes procedures for arbitration to resolve disputed Public Assistance applications under the following major disaster declarations: DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607.

(b) *Applicability.* An applicant or subgrantee (hereinafter "applicant" for purposes of this section) may request arbitration of a determination made by FEMA on an application for Public Assistance, provided that the total amount of the project is greater than \$500,000, and provided that:

(1) the applicant is eligible to file an appeal under § 206.206; or

(2) the applicant had a first or second level appeal pending with FEMA pursuant to § 206.206 on or after February 17, 2009.

(c) *Governing rules.* An applicant that elects arbitration agrees to abide by this section and applicable guidance. The arbitration will be conducted pursuant to procedure established by the arbitration panel.

(d) *Limitations*—(1) *Election of remedies.* A request for arbitration under this section is in lieu of filing or continuing an appeal under § 206.206.

(2) *Final agency action under § 206.206.* Arbitration is not available for any matter that obtained final agency action by FEMA pursuant to § 206.206 prior to February 17, 2009. Arbitration is not available for determinations for which the applicant failed to file a timely appeal under the provisions of § 206.206 prior to August 31, 2009, or for determinations which received a decision on a second appeal from FEMA prior to February 17, 2009.

(e) *Request for arbitration*—(1) *Content of request.* The request for arbitration must contain a written statement and all documentation supporting the position of the applicant, the disaster number, and the name and address of the applicant's authorized representative or counsel.

(2) *Submission by the applicant to the Grantee, the FEMA Regional Administrator, and the arbitration administrator.* An applicant under paragraph (b)(1) of this section must submit its request for arbitration in writing simultaneously to the Grantee, the FEMA Regional Administrator, and the arbitration administrator within 30 calendar days after receipt of notice of the determination that is the subject of the arbitration request or by September 30, 2009, whichever is later. An applicant under paragraph (b)(2) of this section must make a request for arbitration in writing and, if FEMA has not issued a decision on the appeal, submit a withdrawal of the pending appeal, simultaneously to the Grantee, the FEMA Regional Administrator, and the arbitration administrator by October 30, 2009.

(3) *Submission by the Grantee to the arbitration administrator and FEMA.* Within 15 calendar days of receipt of the applicant's request for arbitration, the

Grantee must forward the name and address of the Grantee's authorized representative or counsel, and may forward a written recommendation in support or opposition to the applicant's request for arbitration, simultaneously to the FEMA Regional Administrator, the arbitration administrator, and the applicant.

(4) *Submission of FEMA's response.* FEMA will submit a memorandum in support of its position, a copy of the Project Worksheet(s), and any other supporting information, as well as the name and address of its authorized representative or counsel, simultaneously to the arbitration administrator, the Grantee, and the applicant, within 30 calendar days of receipt of the applicant's request for arbitration.

(5) *Process for submissions.* When submitting a request for arbitration, the applicant should describe its claim with sufficient detail so that the circumstances of the dispute are clear to the arbitration panel. All papers, notices, or other documents submitted to the arbitration administrator under this section by the applicant, the Grantee, or FEMA will be served on each party's authorized representative or counsel. The submitting party will make such service by courier or overnight delivery service (such as Federal Express, DHL, United Parcel Service, or the United States Postal Service overnight delivery), addressed to the party, representative, or counsel, as applicable, at its last known address.

(f) *Selection of arbitration panel.* The arbitration administrator will select the arbitration panel for arbitration and notify the applicant, FEMA, and the Grantee of the names and identities of the arbitrators selected for the panel.

(g) *Preliminary conference.* The arbitration panel will hold a preliminary conference with the parties and/or representatives of the parties within 10 business days of the panel's receipt of FEMA's response to the request for arbitration. The panel and the parties will discuss the future conduct of the arbitration, including clarification of the disputed issues, request for disqualification of an arbitrator (if applicable), and any other preliminary matters. The date and place of any oral

hearing will be set at the preliminary conference. The preliminary conference will be conducted by telephone.

(h) *Hearing*—(1) *Request for hearing*. The panel will provide the applicant and FEMA with an opportunity to make an oral presentation on the substance of the applicant's claim in person, by telephone conference, or other means during which all the parties may simultaneously hear all other participants. If the applicant or FEMA would like to request an oral hearing, the request must be made no later than the preliminary conference.

(2) *Location of hearing*. If an in-person hearing is authorized, it will be held at a hearing facility of the arbitration panel's choosing.

(3) *Conduct of hearing*. Each party may present its position through oral presentations by individuals designated in advance of the hearing. These presentations may reference documents submitted pursuant to paragraph (e) of this section; the parties may not provide additional paper submissions at the hearing. If the panel deems it appropriate or necessary, it may request additional written materials from either or both parties or seek the advice or expertise of independent scientific or technical subject matter experts.

(4) *Closing of hearing*. The panel will inquire of each party whether it has any further argument. When satisfied that the record is complete, the panel will declare the hearing closed, unless a post-hearing submission of additional information or a memorandum of law is to be provided in accordance with this paragraph. The hearing will be declared closed as of the date set by the panel for the submission of the additional information or the memorandum of law.

(5) *Time limits*. The panel will endeavor to hold the hearing within 60 calendar days of the preliminary conference.

(6) *Postponement*. The arbitration panel may postpone a hearing upon agreement of the parties, or upon request of a party for good cause shown. Within 10 business days of the postponement, the arbitration panel will notify the parties of the rescheduled date of the hearing.

(7) *Record of the hearing*. There will be no recording of the hearing, unless a party specifically requests and arranges for such recording at its own expense.

(8) *Post-hearing submission of additional information*. A party may file with the arbitration panel additional information or a memorandum of law after the hearing upon the arbitration panel's request or upon the request of one of the parties with the panel's consent. The panel will set the time for submission of the additional information or the memorandum of law.

(9) *Reopening of hearing*. The hearing may be reopened on the panel's initiative under compelling circumstances at any time before the decision is made.

(i) *Review by the arbitration panel*. (1) *Determination of timeliness*. Upon notification by FEMA, or on its own initiative, the arbitration panel will determine whether the applicant timely filed a request for arbitration.

(2) *Substantive review*. The arbitration panel will consider all relevant written materials provided by the applicant, the Grantee, and FEMA, as well as oral presentations, if any. If the panel deems it appropriate or necessary, it may request additional written materials from either or both parties or seek the advice or expertise of independent scientific or technical subject matter experts.

(j) *Ex parte communications*. No party and no one acting on behalf of any party will engage in ex parte communications with a member of the arbitration panel. If a party or someone acting on behalf of any party engages in ex parte communications with a member of the arbitration panel, the party that engaged in such communication will provide a summary or a transcript of the entire communication to the other parties.

(k) *Decision*—(1) *Time limits*. The panel will make every effort to issue a written decision within 60 calendar days after the panel declares the hearing closed pursuant to paragraph (h)(4) of this section, or, if a hearing was not requested, within 60 calendar days following the receipt of FEMA's response to the request for arbitration. A decision of the panel may take longer than

60 calendar days if the arbitration involves a highly technical or complex matter.

(2) *Form and content.* The decision of the panel will be in writing and signed by each member of the panel. The panel will issue a reasoned decision that includes a brief and informal discussion of the factual and legal basis for the decision.

(3) *Finality of decision.* A decision of the majority of the panel shall constitute a final decision, binding on all parties. Final decisions are not subject to further administrative review. Final decisions are not subject to judicial review, except as permitted by 9 U.S.C. 10.

(4) *Delivery of decision.* Notice and delivery of the decision will be by facsimile or other electronic means and by regular mail to each party or its authorized representative or counsel.

(l) *Costs.* FEMA will pay the fees associated with the arbitration panel, the costs of any expert retained by the panel, and the arbitration facility costs, if any. The expenses for each party, including attorney's fees, representative fees, copying costs, costs associated with attending any hearing, or any other fees not listed in this paragraph will be paid by the party incurring such costs.

(m) *Guidance.* FEMA may issue separate guidance as necessary to supplement this section.

[FR 44767, Aug. 31, 2009]

**§ 206.210 Dispute Resolution Pilot Program.**

(a) *Scope.* Pursuant to section 1105 of the Sandy Recovery Improvement Act of 2013, Public Law 113–2, this section establishes procedures for a Dispute Resolution Pilot Program under which an applicant or subgrantee (hereinafter “applicant” for purposes of this section) may request the use of binding arbitration by a panel to resolve disputes arising under section 403, 406, or 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b, 5172, 5173).

(b) *Definitions.* In this section, the following definitions apply:

*Administrative record* means all the documents and materials directly or indirectly considered by the agency

and relied upon in making the first appeal determination pursuant to § 206.206. This record may include, but is not limited to, Project Worksheets (all versions) and supporting backup documentation, correspondence, photographs, and technical reports.

*Applicant* is used throughout this regulation text and refers to the definition in FEMA's regulations at 44 CFR 206.201(a).

*Arbitration sponsor* means the entity or entities FEMA selects to administer the arbitrations requested under this rule.

*Frivolous* means the applicant knew or reasonably should have known that its actions lack an arguable basis in law, policy, or in fact.

*Grantee* is used throughout this regulation text and it refers to the definition in FEMA's regulations at 44 CFR 206.201(e).

*Legitimate amount in dispute* means the difference between the amount of grant funding sought by the applicant for a project as reimbursable under the Public Assistance Program and the amount of grant funding which FEMA has determined eligible for a project under the Public Assistance Program.

*Non-Federal share* means that the project is not 100% federally funded and the applicant or grantee bear a percentage of the costs pursuant to the cost sharing provisions established in the FEMA-State Agreement and the Stafford Act;

*Notice* means actual notice that is transmitted to and received by a representative of the applicant either via regular mail, facsimile, or electronic transmission. The notice may be transmitted simultaneously to the grantee and the applicant.

*Panel* means an independent review panel referenced in section 1105(b)(1) of SRIA. A panel consists of three members who are qualified to review and resolve disputes under section 1105 of the SRIA.

(c) *Applicability.* This section applies to an applicant that wants to request arbitration of a determination FEMA has previously made on an applicant's application for Public Assistance for disasters declared on or after October 30, 2012. The following criteria apply: